IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 37123 of 2007(T)

I.A.288/06 IN OS.36/2005 of MUNSIFF COURT, IDUKKI
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PETITIONER:

JOSE KURUVILA, AGED 52, S/O.KURUVILA,
KALARIPARAMBIL HOUSE, ARAKKULAM VILLAGE,
KEETILLA KARA.

BY ADV. SRI.N.M.MOHAMMED AYUB
SRI.JOHNSON JOSEPH

RESPONDENTS:

BABY KURUVILA, AGED 54, S/O.KURUVILA,
KALARIPARAMBIL HOUSE, ARAKKULAM VILLAGE,
KEETTILLA KARA,
THODUPUZHA, IDUKKI-2.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 37123 OF 2007

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Dated this the 14th day of December, 2007.

J U D G M E N T

This writ petition is filed against the order of the Munsiff, Idukki in I.A.288/06 in O.S.36/05. It was an application filed by the plaintiff to set aside the Commissioner's plan and report. The Court below considered the matter and had found that the Commissioner was specifically directed to locate 15 acres and four cents of property of the father of plaintiff and then the property of the plaintiff with the gift deed No.535/96 so as to locate its north western boundary where the defendants property lies. The Court further held that as there is no mention made by the Commissioner either in the report or in the plan that he has located 15 acres and 4 cents of the property and that it cannot be ascertained whether he has prepared the Commissioner's report and plan as directed by this Court. The learned counsel for the writ petitioner submits before me

that evidence had been let in in this case and the Commissioner had given evidence. When there is a specific direction by the Court to do the work in a particular manner and when the Court has specifically instructed what is to be done it is the duty of the Commissioner to do it and any amount of oral evidence will not be sufficient to hold it otherwise. Therefore, I do not find any mistake committed by the Court below in remitting the Commissioner's plan and report but at the same time the objection is filed by the plaintiff and therefore so far as the expenses are concerned it is for the plaintiff to meet it and the ultimate liability will depend upon the result of the suit. The Commissioner shall try to do the work within a time frame of two months from today.

With this observation, the writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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